

Information Disclosure Statement

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: August 21, 2008

Signature: 

(Linda L. Gibson)

Docket No.:

58895/P003US/10305848

(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Robert E. Cavanaugh

Application No.: 10/727,068

Confirmation No.: 5018

Filed: December 3, 2003

Art Unit: 2135

For: SYSTEM AND METHOD FOR NETWORK
EDGE DATA PROTECTION

Examiner: T. B. Truong

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

MS Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR 1.97, Applicant hereby makes of record the following additional information. A PTO Form SB/08 and a full copy of each of the documents required under 37 CFR 1.98(a)(2) accompany this statement.

Applicant has become aware of the following information:

1. On August 20, 2003, Deep Nines (owner of this application) filed an Original Petition and Application for Temporary Restraining Order and Injunctive Relief and Request for Summary Judgment against Clifford Sharp. In response, Mr. Sharp filed a Response to Plaintiff's Original Petition and Application for Temporary Restraining Order and Injunctive Relief and Request for Summary Judgment in which he claimed to be the inventor of all of Deep Nine Inc.'s (hereinafter DNI) technology. *Deep Nines, Inc. v. Sharp*, No. DV 03-08451 D (95TH Dist. Ct., Dallas County, Tex. Sept. 2003). This document is cited on the enclosed PTO Form SB/08.

2. In a patent infringement suit against McAfee, which involved U.S. Patent No. 7,058,976 (hereinafter the '976 patent), a document entitled "Cliff's DNI Chronicles" (hereinafter "Cliff's Chronicles") was discovered in which Mr. Sharp again claimed to be the inventor of all technology of DNI, except one (1) concept. This one (1) concept is identified as concept "???" in Cliff's Chronicles, marked as McAfee Trial Exhibit No. 0016. *Deep Nines, Inc. v. McAfee*, No. 9:06-CV-174-RC (E.D. Tex. filed May 8, 2008). This document is also cited on the enclosed PTO Form SB/08.

3. In the patent infringement case referenced in (2) above, McAfee alleged that Mr. Sharp should have been named as a co-inventor of the '976 patent in suit. *See* Defendant McAfee, Inc.'s Third Answer and Counterclaims to Plaintiff's First Amended Complaint and Jury Demand, *Deep Nines, Inc. v. McAfee*, No. 9:06-CV-174-RC (E.D. Tex. filed May 8, 2008). This document is also cited on the enclosed PTO Form SB/08.

4. In the patent infringement suit identified above, there were five (5) claims of inequitable conduct and one (1) claim of common law fraud. The claims (listed in the order in which they appear in the cited document) were:

- a) Inequitable Conduct – Count 1: Deep Nines did not submit certain prior art to the Patent Office for consideration.
- b) Inequitable Conduct – Count 2: Deep Nines failed to disclose the dispute of inventorship.
- c) Inequitable Conduct – Count 3: Mrs. Dark purposely misidentified the inventorship of the '976 patent
- d) Inequitable Conduct – Count 4: Mrs. Dark and Mr. Neal filed false declarations and made false statements during prosecution of the '976 patent.
- e) Inequitable Conduct – Count 5: Deep Nines' false representations that its disclosures of the claimed inventions were public.
- f) Common Law Fraud: Ms. Dark and Deep Nines Inc., through fraud, obtained the claims from McAfee's '122 patent (U.S. Patent No. 6,513,122).

See Defendant McAfee, Inc.'s Third Answer and Counterclaims to Plaintiff's First Amended Complaint and Jury Demand, *Deep Nines, Inc. v. McAfee*, No. 9:06-CV-174-RC (E.D. Tex. filed May 8, 2008). All the above claims except (b) and (e) were dropped prior to trial. Claims (b) and (e) were both dismissed by the judge after a bench hearing.

Furthermore, Mr. Sharp acknowledged that the one concept Mr. Sharp did not invent (concept "???" in the Chronicle) was identified by him in a deposition as having the title of INTELLIGENT FEEDBACK LOOP PROCESS CONTROL SYSTEM. This is the same title of the U.S. Patent No. 7,058,976. This patent is also cited on the enclosed PTO Form SB/08.

In summary, it is Applicant's belief that U. S. Patent No. 7,058,976 currently contains the proper inventive entity. If the Examiner desires any further information, the Examiner is respectfully requested to contact the undersigned.

The statements herein should not to be interpreted as a representation that the cited information is material, that an exhaustive investigation has been conducted, or that no other relevant information exists. Nor shall the citation of any document herein be construed *per se* as a representation that such information is pertinent. Moreover, Applicant understands the Examiner will make an independent evaluation of the information and if the Examiner requires any further information, Applicant will provide any such information.

This Supplemental Information Disclosure Statement is filed more than three months after the U.S. filing date, OR more than three months after the date of entry of the national stage of a PCT application, AND after the mailing date of the First Office Action on the merits, whichever occurs first, but before the mailing date of a Final Office Action or Notice of Allowance (37 CFR 1.97(c)).

Furthermore, in accordance with 37 CFR 1.704(d), Applicant(s) note(s) that to our knowledge this communication was not received by any individual designated in 1.56(c) more than thirty days prior to the filing of this statement.

Applicant believes no fee is due. However, if a fee is due the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have

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been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 06-2380, under Order No. 58895/P003US/10305848.

Dated: August 21, 2008

Respectfully submitted,

By

David H. Tannenbaum

Registration No.: 24,745

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-8333

(214) 855-8200 (Fax)

Attorney for Applicant